(1885) 140 Mass. 38, 1 N. E. 737. Furtherfore, when the goods insured are capable of legitimate use, the fact they are used for an illegal purpose will not avoid the policy. *Erb* v. *German-American Ins. Co.* (1896) 98 Iowa 606, 67 N. W. 583; see *Insurance Co. of North America* v. *Evans,* supra; but *cf. Johnson* v. *Union Marine Ins. Co.* (1879) 127 Mass. 555. But the foregoing cases must be distinguished from those in which the policy has been declared void either because it was a necessary condition of the policy that an illegal act be performed, see *Niagara Fire Ins. Co.* v. *De Graff* (1863) 12 Mich. 124; *Erb* v. *German-American Ins. Co., supra,* or because the contract was entered into for the direct purpose of protecting an illegal traffic. *Mount* v. *Waite* (N. Y. 1811) 7 Johns. 434; *Russell* v. *De Grand* (1818) 15 Mass. 35. The failure to distinguish between insurance on the property and insurance on the business has led some courts to declare the contract void in all cases. *Kelly* v. *Home Ins. Co.* (1867) 97 Mass. 288; *Johnson* v. *Marine Ins. Co., supra.* The court in the principal case evidently considered this policy as being on the business and accordingly refused to allow the insured to recover.

INSURANCE—LIABILITY INSURANCE—EXERCISE OF INSURER'S RIGHT TO DEFEND OR SETTLE.—The plaintiff was insured by the defendant to the extent of $5,000 against liability from accidents resulting from the operation of an automobile. The defendant had the exclusive right to defend or settle all actions arising out of such accidents. A third party, who had been struck by the plaintiff's automobile, offered to compromise for $3,150 which the defendant refused to pay unless the plaintiff contributed $750. The plaintiff paid the $750 for which this action is brought. *Held,* he could not recover. *Levin* v. *New England Casualty Co.* (1917) 101 Misc. 402, 166 N. Y. Supp. 1055.

An action may be maintained to recover money paid under duress provided the retention of the benefit therefrom is unconscionable. Woodward, Quasi-Contracts § 211. Assuming that the insurer acted in bad faith, the facts of the principal case would seem to afford sufficient evidence of coercion. *Cf. Brown & McCabe* v. *London, etc. Co.* (D. C. 1915) 232 Fed. 298. However, in order to determine whether the insurer is acting unconscionably, it is necessary to inquire into the nature of its relationship to the insured. An insurer against claims of third parties is ordinarily given the exclusive right to defend or settle such claims, 16 Columbia Law Rev. 605, in order to minimize its liability under the policy. See *Connolly* v. *Bolster* (1905) 187 Mass. 266, 72 N. E. 981. As against third parties, it may exercise this right for its own benefit, even though in so doing the interests of the insured be prejudiced, *New Orleans, etc. R. R.* v. *Maryland Casualty Co.* (1905) 114 La. 153, 38 So. 89, since the right is given on the understanding that it be so exercised. See *Davidson* v. *Maryland Casualty Co.* (1908) 197 Mass. 167, 83 N. E. 407. But, inasmuch as the insurer must exercise its authority to defend or settle with due care, *Attlebora Mfg. Co.* v. *Frankfort, etc. Co.* (C. C. 1907) 171 Fed. 495, and in good faith, *Brassil* v. *Maryland Casualty Co.* (1914) 210 N. Y. 235, 104 N. E. 622; *Brunswick Realty Co.* v. *Frankfort Ins. Co.* (1917) 99 Misc. 639, 166 N. Y. Supp. 36; see *New Orleans, etc. R. R.* v. *Maryland Casualty Co. supra,* it would seem there is a confidential relationship between the insured and the insurer. Therefore, the insurer is acting unconscionably if it deliberately uses as a means of offense against the insured an authority intended to be asserted protectively

in transactions with third persons. *Brown & McCabe* v. *London, etc. Co., supra.* On the other hand, unless it appears that the insurer was actuated by motives other than that of self-protection, no action will lie against it, *cf. Wisconsin Zinc Co.* v. *Fidelity, etc. Co.* (1916) 162 Wisc. 39, 155 N. W. 1081, and it is on this hypothesis that the principal case may be sustained.

INSURANCE—WAR RISK—PERILS OF THE SEA.—A vessel insured against war risks but not against perils of the sea was boarded by an English naval officer and compelled to proceed by a course from which the aids to navigation had been removed for war purposes. The ship was subsequently wrecked. *Held,* that the loss was caused by a war risk. *Muller* v. *Globe & Rutgers Fire Ins. Co.* (2 C. C. A. 1917) 246 Fed. 759.

In determining whether a loss is caused by war risk or peril of the sea, only the proximate and not the remote cause is considered, see *France* v. *North of England, etc. Ass'n.* [1917] 2 K. B. 522, *Ionides* v. *Universal Marine Ins. Co.* (1863) 14 C. B. (N. S.) 259. Proximate cause is in all such cases purely a question of fact. *Donegan* v. *Baltimore, etc. Ry.* (C. C. A. 1908) 165 Fed. 869. Generalizations are therefore difficult to make, and it is only from an examination of the decided cases that it can be discovered what the courts mean by proximate cause. For example, the seizure of a ship in consequence of hostilities is a loss due to war risk regardless of the fact that the ship is subsequently destroyed through perils of the sea, *Andersen* v. *Marten* [1908] A. C. 334, see *Magoun* v. *New England Marine Ins. Co.* (1840) 16 Fed. Cas. No. 8961; a loss by collision due to absence of navigation lights in pursuance of admiralty instructions is due to war risk. *British, etc. Co.* v. *Rex* [1917] 2 K. B. 769. On the other hand it has been held that the mere increase of sea peril by removal for belligerent purposes of aids to navigation affords no basis for recovery as from loss due to war risk, *Ionides* v. *Universal Marine Ins. Co., supra,* probably, as the court in the principal case points out, on the ground that such act merely restores the perils of the sea to their normal; and recovery was denied where it was shown that the aids to navigation would have been of no avail had they been present. *Le Quellec* v. *Thomson* (1916) 115 L. T. R. (N. S.) 224. It has also been held that damage to a vessel caused by its running on the wreck of another vessel torpedoed by an enemy submarine was due to perils of the sea, and not to war risk, the torpedoing being a cause too remote. *France* v. *North of England Ass'n., supra.* It seems that the general rule, so far as there is one, is that "the hostile agency first in operation gives character to the whole connected catastrophe", Richards, Insurance (3rd ed.) § 441; *cf. Insurance Co.* v. *Boon* (1877) 95 U. S. 117, and that the court in principal case properly applied this test.

JUDGMENTS—DISMISSAL BY AGREEMENT—PLEAS IN BAR.—The plaintiff sued the defendant for damages for personal injury. The defendant pleaded in bar a former judgment which dismissed the cause by agreement of the parties, the defendant paying costs. *Held,* the judgment of dismissal operated as a bar to a subsequent action on the same cause. *Doan* v. *Bush* (Ark. 1917) 198 S. W. 261.

As a general rule the mere voluntary dismissal of an action by the plaintiff is not a bar to a subsequent suit brought on the same cause. Freeman, Judgments (3rd ed.) § 261. To make the judgment of dismissal *res judicata* it is necessary that it be entered either on the merits